

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

ARMIS ARRENDONDO,

Plaintiff,

vs.

D.W. NEVEN, *et al.*,

Defendants.

2:09-cv-02158-KJD-LRL

ORDER

This prison civil rights action comes before the Court on plaintiff's motion (#9) for the Court to assign the Marshal to complete service and his motion (#10) for leave to file an amended or supplemental complaint.

On the motion for leave to amend, leave of court is not required under Rule 15(a). Plaintiff may amend the pleadings once as a matter of course within 21 days of service, which has not been ordered yet herein, or within 21 days after service of a responsive pleading or a Rule 12 motion enumerated in Rule 15(a)(1)(B). Moreover, under Local Rule LR 15-1, the moving party must attach the proposed amended pleading to any motion to amend, which plaintiff did not do so here.

The motion for leave to amend therefore will be denied without prejudice, both because the motion is unnecessary and further because the motion does not comply with the local rule. The Court will hold action on screening this matter for thirty days to afford plaintiff an opportunity to file an amended complaint. If plaintiff does not file an amended pleading within that time frame, the Court will screen the case on the pleadings then on file.

1 The motion for service by the Marshal is premature, as this Court held in its prior order
2 (#8) as to a prior similar motion. A prisoner civil rights action may not be served, and no
3 response is required from the defendants, until after the Court has screened the case under
4 28 U.S.C. § 1915A and ordered a response. Service has become even more premature in
5 this case now that plaintiff actively is seeking to amend the complaint, which will delay
6 screening. If the Court directs service and a response after screening as to defendants who
7 potentially may be represented by the Nevada Attorney General -- such as, potentially,
8 officers and employees of the Nevada Department of Corrections -- the Court will direct an
9 appropriate notice to the Attorney General for her office to determine whether service can be
10 accepted for the named defendants. If the Attorney General does not accept service as to
11 a defendant or defendants, plaintiff thereafter may request service through the Marshal as to
12 defendants for whom service has not been accepted. None of the foregoing will occur,
13 however, prior to the completion of screening herein. Plaintiff's efforts to effectuate service
14 prior to the completion of screening have no effect.

15 IT THEREFORE IS ORDERED that plaintiff's motion (#9) for the Court to assign the
16 Marshal to complete service and his motion (#10) for leave to file an amended or
17 supplemental complaint both are DENIED without prejudice.

18 IT FURTHER IS ORDERED that plaintiff shall have thirty (30) days within which to file
19 an amended or supplemental complaint. If plaintiff does not file an amended or supplemental
20 complaint within that time period, the matter will be screened on the pleadings then on file as
21 soon as the Court is able to reach the matter. The thirty-day period for filing an amended or
22 supplemental complaint under this order does not constitute a final amended pleadings
23 deadline, and the preliminary deadline under this order is subject to later scheduling orders
24 in the case setting deadlines for amended pleadings and other pretrial matters.

25 IT FURTHER IS ORDERED that plaintiff further shall clearly title the amended
26 complaint as an amended complaint by placing the word "AMENDED" immediately above
27 "Civil Rights Complaint" on page 1 in the caption and shall place the docket number,
28 2:09-cv-02158-KJD-LRL, above the word "AMENDED" in the space for "Case No." Under

1 Local Rule LR 15-1 any amended complaint filed must be complete in itself without reference
2 to prior filings. Thus, any allegations, parties, or requests for relief from prior papers that are
3 not carried forward in the amended complaint no longer will be before the Court.

4 IT FURTHER IS ORDERED that the Clerk of Court shall file the original complaint but
5 shall withhold service at this time.

6 The Clerk shall provide plaintiff with a copy of the original complaint together with two
7 copies of a Section 1983 complaint form and one copy of the instructions for same.

8 DATED: 6-21-10

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12 LAWRENCE R. LEAVITT
13 United States Magistrate Judge
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